

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALLEN DUPREE GARRETT,

1:20-cv-5235 (NLH) (JS)

Plaintiff,

OPINION

v.

PHIL MURPHY, et al.,

Defendants.

APPEARANCES:

Allen Dupree Garrett
4366289
Camden County Correctional Facility
330 Federal Street
Camden, NJ 08103

Plaintiff Pro se

HILLMAN, District Judge

Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983, against New Jersey Governor Phil Murphy and CCCF Captain Rebecca Franceschini for claims related to the coronavirus. ECF No. 1. He also argued the state courts violated his speedy trial rights. The Court dismissed Plaintiff's Fourteenth Amendment claims without prejudice for failure to state a claim, 28 U.S.C. § 1915(e)(2)(B)(ii), but granted him leave to amend those claims. The Court informed Plaintiff that he had to raise his speedy trial claims in a petition for

writ of habeas corpus under 28 U.S.C. § 2241.¹

On August 21, 2020, Plaintiff filed a notice of appeal. ECF No. 19. He subsequently filed a document requesting a final order from the Court on September 16, 2020. ECF No. 23. "Plaintiff has a right or standing to appeal please Submitt a Final Order Closure upon 20-cv-5235." Id. at 1. Although Plaintiff has filed an appeal of this Court's prior order, the Court retains the ability to issue a final order at Plaintiff's "clear and unequivocal declaration of intent to 'stand on [his] complaint.'" Weber v. McGrogan, 939 F.3d 232, 240 (3d Cir. 2019) ("Had the District Court issued an order at that time, the judgment would be final under § 1291").

"If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate." Borelli v. City of Reading, 532 F.2d 950, 951 n.1 (3d Cir. 1976); see also Weber, 939 F.3d at 241. Plaintiff has declined this Court's opportunity to amend his complaint and has specifically requested this Court enter a final order of dismissal. ECF

¹ Plaintiff's speedy trial claims are pending before this Court in an action under 28 U.S.C. § 2241, Garrett v. Murphy, No. 20-11502.

No. 23. The Court will grant his request.

An appropriate order follows.

Dated: September 18, 2020
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.